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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,955	05/16/2000	WOLFGANG ROHDE	23232.0002	5703
23859	7590	11/13/2003	EXAMINER	
NEEDLE & ROSENBERG, P.C.			COLLINS, CYNTHIA E	
SUITE 1000			ART UNIT	
999 PEACHTREE STREET			PAPER NUMBER	
ATLANTA, GA 30309-3915			1638	

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/462,955	Applicant(s) ROHDE ET AL.	
	Examiner Cynthia Collins	Art Unit 1638	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 29 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 12-23, 25 and 26.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

Continuation of 3. Applicant's reply has overcome the following rejection(s): the objection to claim 18; the rejection of claims 17-20 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements; the rejection of claims 17 and 19 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of the "DNA fragments according to Claim 26"; the rejection of claim 26 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "The composition of claim 12"; the rejection of claim 16 under 35 U.S.C. 102(b) as being anticipated by Rohde.

Continuation of 5. does NOT place the application in condition for allowance because: (a) the request does not overcome the objection under 35 U.S.C. 132 to the amendment filed September 26, 200, for introducing new matter into the disclosure, as the specification does not indicate that the Rohde publication is to be incorporated by reference; (b) the request does not overcome the rejection of claim 16 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "variant" and "a modified promoter which does not have an activity 20% more than or 20% less than the promoter activity of nucleotides 211-911 of SEQ ID NO:1", as is still unclear how different from SEQ ID NO:1 the DNA fragment can be to be a "variant" which does not have an activity 20% more than or 20% less than the promoter activity of nucleotides 211-911 of SEQ ID NO:1"; (c) the request does not overcome the rejection of claims 12, 13, 17-21, 23 and 25-26 under 35 U.S.C. 112, first paragraph, for scope of enablement, because the specification does not provide sufficient guidance for one skilled in the art to make and use without undue experimentation a CFDV virus fragment that has promoter activity that only has the stem-loop structure set forth in nucleotides 962-991 of SEQ ID NO:1; (d) the request does not overcome the rejection of claims 16 and 22 under 35 U.S.C. 112, first paragraph, for enablement, as the specification does not provide guidance for making and using promoter sequences that encompass variants of SEQ ID NO:1 and every fragment thereof that is a modified promoter which does not have 20% more than or 20% less than the promoter activity of nucleotides 211-911 of SEQ ID NO:1; (e) the request does not overcome the rejection of claims 16 and 22 under 35 U.S.C. 112, first paragraph, for written description, as promoter sequences that encompass variants of SEQ ID NO:1 and every fragment thereof that is a modified promoter which does not have 20% more than or 20% less than the promoter activity of nucleotides 211-911 of SEQ ID NO:1 are not described; (f) the request does not overcome the rejection of claims 12-23 and 25-26 under the judicially created doctrine of obviousness-type double patenting as a Terminal Disclaimer has not been submitted.

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180

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